

ASM DEVELOPMENT SDN BHD

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v.

NAM SIN & SONS SDN BHD

HIGH COURT MALAYA, MELAKA
AHMAD MAAROP JC
[CIVIL APPEAL NO: 12-20 OF 2000]
9 DECEMBER 2000

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CIVIL PROCEDURE: *Judgments and orders - Consequent order fixing time limit for payment to comply with earlier order - Subordinate Courts Rules 1980, O. 30 r. 6(2) - Whether earlier order had fixed time for payment - Whether payment ordered to be made "forthwith" in earlier order a sufficient expression of time - Whether O. 30 r. 6(2) inapplicable in the circumstances*

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On 26 February 1999, the appellant garnishee was ordered to pay forthwith to the respondent a sum of RM182,996.27. On 15 December 1999 the respondent applied under O. 30 r. 6(2) of the Subordinate Courts Rules 1980 ('SCR') for an order that the appellant make the payment within 7 days from the date of service of the order. The application was made on the ground that the appellant failed to comply with the order of 26 February 1999 and that a time limit should be imposed for the appellant to comply with the said order. The sessions court allowed the application on 24 March 2000. Hence this appeal by the appellant.

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The appellant contended that by virtue of the word "forthwith" in the order dated 26 February 1999, there was already a time limit fixed for payment. As such, the respondent's application under O. 30 r. 6(2) SCR was misconceived as the said order was only applicable where no time limit was specified in the order in question.

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Held:

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[1] Order 30 r. 6(2) SCR is not applicable in a case where a court order has already specified a time limit within which an act is to be done.

[2] The word "forthwith" meant without any delay or loss of time and was a sufficient expression of time. Therefore, the order dated 26 February 1999 had already fixed a time limit for payment. It followed that the application by the respondent under O. 30 r. 6(2) SCR was misconceived. The sessions judge had therefore erred in making the order on 24 March 2000.

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[Appeal allowed with costs.]

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- a Case(s) referred to:**
Carter v. Roberts [1903] 2 CH 312 (*refd*)
United Malayan Banking Corp Bhd v. Chuah Gim Suan [1993] 2 AMR Supp Rep 803 (*fol*)
Visia Finance Bhd v. Export Credit & Leasing Sdn Bhd & Ors [1998] 2 CLJ 845 (*refd*)
- b Legislation referred to:**
Subordinate Courts Rules 1980, O. 30 rr. 6(1), (2), O. 33 r. 4
- Other source(s) referred to:**
Kamus Dewan, 1991
- c Kamus Dwibahasa, Bahasa Inggeris-Bahasa Malaysia, Dewan Bahasa Dan Pustaka, 1989**

For the appellant - M/s Mah-Kamaria & Partners
For the respondent - M/s Moi NK Koh & Chee
- d Reported by Usha Thiagarajah**

JUDGMENT

Ahmad Maarop JC:

- e** This is an appeal by the appellant (garnishee) against the decision made by the learned judge of the Malacca sessions court on 24 March 2000 ordering the appellant to pay an amount of RM182,996.27 into court within seven days from the date a sealed copy of the order was served on the appellant.
- The facts of the case relevant to this appeal are as follows:
- f** On 26 February 1999 in the proceeding in Summons No. 52-436-98, the Malacca sessions court recorded a consent order ordering the appellant to pay forthwith to the judgment creditor a sum amounting to RM182,996.27 being the debt owed by the appellant and payable to the judgment debtor. This said order reads as follows:
- g** Adalah diperintahkan bahawa Garnisi tersebut **hendaklah segera** membayar kepada pemiutang penghakiman tersebut jumlah sebanyak RM182,996.27 iaitu hutang yang kena dibayar oleh Garnisi tersebut kepada penghutang penghakiman tersebut. Dan bahawa tiada perintah atas kos.
- h** In the application dated 15 December 1999 and amended by the sessions court order dated 18 February 2000, the respondent (judgment creditor) applied to the sessions court, Malacca for an order that the garnishee do pay to the judgment creditor the sum of RM182,996.27 within seven days from the date of service of the order. The application was made under O. 30 r. 6(2) of the
- i** Rules of the Subordinate Courts 1980 (ROSC). The ground advanced in

support of the application was that the appellant had failed to comply with the order dated 26 February 1999. The application was made so that a time limit could be fixed for the appellant to comply with the order dated 26 February 1999. a

On 24 March 2000, the sessions court allowed the respondent's application and ordered the appellant to pay to the respondent the sum of RM182,996.27, within seven days from the date of service on the appellant of a sealed copy of the order. The order reads: b

ADALAH DIPERINTAHKAN bahawa Garnisi membayar Pemiutang penghakiman jumlah sebanyak RM182,996.27 mengikut perintah bertarikh 26 February 1999 yang diperolehi di mahkamah yang mulia ini dalam masa 7 hari dari tarikh sesalinan perintah ini yang telah dimeteraikan serta perintah bertarikh 26.2.99 diserahkan kepada Garnisi. c

The appeal by the appellant is against the decision of the learned sessions court judge in making the aforesaid order. d

The issue before this court in this appeal is whether the application by the respondent and the consequent order dated 24 March 2000 were properly made under O. 30 r. 6(2) of the ROSC?. This in turn depends on the issue as to whether the word "forthwith" is a sufficient expression of time. e

It was contended by learned counsel for the appellant, Mr. Tan Han Seng that the word "forthwith" (segera) means as soon as the act could be reasonably done and that word "forthwith" was a sufficient expression of time. In support he cited the judgment of Byrne J in *Carter v. Roberts* [1903] 2 CH 312. He contended that since forthwith was a sufficient expression of time, the order dated 26 February 1999 had already specified a time limit for the appellant to pay the judgment creditor the sum of RM182,996.27. As the order dated 26 February 1999 had already fixed a time limit for the appellant to make payment, the application by the respondent under O. 30 r. 6(2) of ROSC was misconceived, because the provision under O. 30 r. 6(2) was to cover a situation where no time limit was specified in the order in question. Mr. Tan Han Seng therefore submitted that the respondent's application was made under the wrong order and hence the sessions court had no jurisdiction under O. 30 r. 6(2) ROSC to specify the time limit of seven days. On this ground alone, he submitted the appeal should be allowed. As an additional ground Mr. Tan Han Seng submitted that what the respondent attempted to do was to vary the order dated 26 February 1999. Since that order was a consent order it could only be varied by consent of both parties. In support he cited the case of *Visia Finance Bhd v. Export Credit & Leasing Sdn Bhd & Ors* [1998] 2 CLJ 845. f
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- a* Learned counsel for the respondent Miss Chua Bee Ang in reply submitted that the order dated 26 February 1999 did not specify the time frame within which the appellant must make payment and until the date this appeal was heard the appellant had not made the payment as ordered. The purpose of the application was therefore to get a court order which specified the time limit
- b* for the appellant to make payment. She added that if the appellant still did not comply with the order, the respondent might consider commencing a contempt proceeding against the appellant. According to her, to do that, the respondent had to be sure of the time limit within which the appellant must pay.
- c* Order 30 r. 6 of the ROSC provides:
- (1) Notwithstanding that a judgment or order requiring a person to do an act **specifies a time** within which the act is to be done, the Court shall, without prejudice to Order 3, rule 5, have power to make an order
- d* requiring the act to be done within another time, being such time after service of that order, or such other time as may be specified therein.
- (2) Where, notwithstanding O. 29 r. 6(1), or by reason of O. 29 r. 6(2), a judgment or order requiring a person to do an act **does not specify a time** within which the act is to be done, the court shall have power
- e* subsequently to make an order requiring the act to be done within such time after service of that order, or such other time, as may be specified therein.
- (3) An application for an order under this rule must be made by notice and the notice must, notwithstanding anything in Order 7, rule 17, be served
- f* on the person required to do the act in question. (Emphasis added)
- In my view O. 30 r. 6 of the ROSC clearly provides for two different types of cases. Under O. 30 r. 6(1) of the ROSC, in a case where there is already an order requiring a person to do an act within a certain time, the court is empowered to make an order requiring that act to be done within another time.
- g* Whereas O. 30 r. 6(2) is applicable in a case where an order does not specify a time within which an act is to be done. In such a case the court shall have the power to make a subsequent order, requiring the act to be done within a certain time specified in the order. Order 30 r. 6(2) is not applicable in a case in which a court order has already specified a time limit within which an act
- h* is to be done.
- The order dated 26 February 1999 was a garnishee order absolute made pursuant to O. 33 r. 4 of ROSC and was substantially in conformity with Form 91 prescribed under the ROSC. The English version of Form 91 uses the word “forthwith” as being the equivalent of the word “segera” used in
- i* Borang 91 in the Bahasa Malaysia version of the ROSC.

According to KAMUS DEWAN, cetakan kedua (Edisi Baru) 1991 “segera” means “tidak berlengah-lengah lagi, cepat, gesa-gesa, lekas-lekas”. a

According to the same dictionary “(dengan) serta-merta” means “pada ketika itu juga, dengan segera”. In my view the words “segera” and “serta-merta” have the same meaning and may be used interchangeably. In English both words mean “forthwith”. Support for this may be derived from Kamus Dwibahasa, Bahasa Inggeris – Bahasa Malaysia, Dewan Bahasa Dan Pustaka (1989), according to which “forthwith” means “dengan serta-merta, dengan segera, lekas (tidak berlengah-lengah).” b

I am also of the view that the word ‘forthwith’ means “without any delay or loss of time” and it is a sufficient expression of time. I find support for this view from the judgment in *United Malayan Banking Corp Bhd v. Chuah Gim Suan* [1993] 2 AMR Supp Rep 803, in which at p. 809, Abdul Hamid Hj Mohamed J (now a judge of the Court of Appeal) said: c

Peguam defendan menghujahkan bahawa perintah itu tidak jelas kerana penggunaan perkataan “forthwith”. d

Saya tidak bersetuju dengan hujah ini. Ini bukan satu kes di mana tempoh untuk melakukan sesuatu tidak disebut langsung. Ia menyebut “forthwith” (dengan serta merta). Perkataan “forthwith” bermakna “without any delay or loss of time” – lihat *Nam Bee Rubber Estate Sdn Bhd v. Syarikat Tanaman Perak Bhd* [1986] 1 MLJ 29, 34 MA e

Dalam kes *Thomas v. Nokes* [1868] LR 6 Eq 521, di mana Kaedah 10, Cons Ord XXIII yang menghendaki,

that every decree or order in suit requiring any person to do an act thereby ordered shall state the time within which the act is to be done. f

Lord Romilly MR memutuskan,

that the word “forthwith”, **was a sufficient expression of the time within which the act was required to be done within the meaning** (Emphasis added). g

Accordingly I accept the submission by learned counsel for the appellant and hold that the order of the Malacca sessions court dated 26 February 1999 in directing the appellant to forthwith pay to the judgment creditor the sum of RM182,996.27, had already fixed a time frame within which the appellant should make the payment of RM182,996.27 to the judgment creditor. In my judgment, adopting the meaning of “forthwith” as explained in the above case, under that order the appellant shall, without any delay make the payment of RM182,996.27 to the judgment creditor. The upshot of this ruling is that the h

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- a* application by the respondent under O. 30 r. 6(2) ROHC was misconceived since, as I have stated earlier, O. 30 r. 6(2) of ROSC is not applicable in a case in which the court order has already fixed a time limit within which an act is to be done. The Sessions court Malacca had therefore erred on 24 March 2000 in making the order under O. 30 r. 6(2) of the ROSC, directing the
- b* garnishee to pay the respondent the sum of RM182,996.27 within seven days from the date of service of a seal copy of that order.

On this ground alone the appellant is entitled to succeed. In the result the appeal is allowed with costs. The order of the Malacca sessions court made on 24 March 2000 is set aside.

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